

***Case No COMP/M.1745 -
EADS***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
with undertakings

Date: 11/05/2000

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EUROPEAN COMMISSION

Brussels, 11.05.2000

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.1745 – EADS

Notification of 25.02.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 25 February 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which DaimlerChrysler AG (“DaimlerChrysler”), Lagardère SCA (“Lagardère”), the French State and Sociedad Estatal de Participaciones Industriales (“SEPI”) merge their activities in the aeronautic, space and defence sectors. To this effect, DaimlerChrysler Aerospace AG (“DASA”), Aérospatiale-Matra and Construcciones Aeronáuticas SA (“CASA”) will be contributed to a newly created company, European Aeronautic, Space and Defence Company (“EADS”).
2. The notification was declared incomplete on 20 March 2000. On 22 March 2000, the parties completed their notification.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

4. Lagardère is a French group primarily operating in i) the high technologies sector (i.e. space, defence and telecommunications); ii) automotive manufacturing; and iii) the communication and media sector. In particular, Lagardère and the French State have

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joint control¹ of Aérospatiale-Matra, a French company active in commercial and military aircraft and helicopters, telecommunications, space systems, guided weapons and defence electronics.

5. DaimlerChrysler is a German-based group active in i) the automotive sector, ii) defence and aerospace, iii) financial and information technology services, and iv) rail systems, automotive electronics and diesel engines. In particular, DaimlerChrysler owns 93% of DASA, a German company primarily active in civil and military aircraft and helicopters space systems, guided weapons, defence electronics and aero engines.
6. SEPI is a Spanish State entity, entrusted with the management and privatisation of certain Spanish State controlled companies. In particular, SEPI owns 99% of CASA, a Spanish company operating in commercial and military aircraft and helicopters, and in space systems.
7. EADS will be established as a Dutch publicly-listed company. Aérospatiale-Matra, CASA, and DASA (except for its MTU aero-engines subsidiary) will then be contributed to EADS, in exchange for shares in the latter company.

II. CONCENTRATION

Joint control

8. After the completion of the transaction and the subsequent Initial Public Offering of EADS, each of the French interests (i.e. Lagardère, the French State and private institutions' stakes) and DaimlerChrysler's stake will amount to 30% of EADS shares. SEPI will hold approximately 5% of EADS shares, the remainder being held by the public (approx. 31%) or by a Lagardère blind trust (approx. 4%).
9. The French interests in EADS will be consolidated through a new French company to be known as Topco SAS ("Topco"). Furthermore, Topco, DaimlerChrysler and SEPI will transfer legal title to all of their shares in EADS to a new Dutch holding company to be known as Managing Partner B.V. ("Managing Partner"). Managing Partner will pool the voting rights corresponding to about 65% of EADS's share capital, and will therefore be able to exert a decisive influence on the decisions taken at EADS's shareholders assembly.
10. Pursuant to an agreed Participation Agreement, Managing Partner will exercise its voting rights so that each of Topco and DaimlerChrysler will be in a position to nominate and remove [equal numbers of EADS's directors]. Given that the decisions (including the approval of the business plan) at EADS's board of directors will be taken by the vote of [a majority of directors], each of Topco and DaimlerChrysler will have veto rights over these decisions, and will therefore have joint control over EADS.

Full function joint venture

11. EADS will perform on a lasting basis all the functions of an autonomous economic entity. As indicated above, it will combine the whole of Aérospatiale-Matra and CASA and the major part of DASA's business, including sufficient assets, personnel, manufacturing facilities and commercial and service networks in order to conduct on a lasting basis its business activities.
12. In the light of the above, it can be concluded that the proposed transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

¹ See case IV/M.1309-Matra/Aérospatiale

III. COMMUNITY DIMENSION

13. The combined aggregate world-wide turnover of the parties to the concentration exceeded EUR 5,000 million in 1998 and each of the undertakings concerned had a Community-wide turnover of more than EUR 250 million. The undertakings concerned did each not achieve more than two-thirds of their aggregate turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

14. EADS will be active in i) commercial aircraft, ii) telecommunication equipment, iii) commercial and military helicopters, iv) space, v) guided weapons, vi) drones, vii) military aircraft and viii) defence electronics.

A. COMMERCIAL AIRCRAFT

15. Most of the parties' activities in commercial aircraft are already integrated through Airbus (formed in 1967 as a *Groupement d'Interet Economique* (GIE) under French law), where each of Aérospatiale-Matra and DASA hold 37.9% of shares and where CASA holds 4.2% of shares, the remaining 20% of shares being British Aerospace Systems ("BAe Systems").
16. After the operation, EADS will therefore own 80% of shares in Airbus. However, there is no indication that the operation will affect the quality or nature of control of Airbus. First, the proposed transaction does not lead to a change from joint to sole control by EADS, because BAe Systems maintains its veto rights vis-à-vis all strategic decisions. Secondly, the remaining shareholders do not obtain additional veto rights or additional board members. And finally, the proposed transaction has no impact on the work share distribution between the Airbus Partners. Accordingly, there is no indication that the operation will affect the competition position of Airbus.
17. There are minor overlaps of the Parties' activities in the following market segments: (i) conversion of passenger to cargo aircraft, where the parties are active through DA's subsidiary Elbe Flugzeugwerke GmbH ("EFW") and AM's subsidiary Sogerma; and (ii) regional aircraft, where Aérospatiale-Matra is active through its 50% participation and joint control, with Alenia, in ATR *GIE*, while DASA and Aérospatiale-Matra (together Dassault) have minority non-controlling participation in other regional aircraft manufacturers.
18. The operation could also create vertical integration between the parties' activities in aircraft production and their activities in the upstream sector of aircraft components (including parts and equipment).

Relevant product markets

Cargo aircraft conversion

19. While cargo aircraft have similar basic design definitions to passenger aircraft models, they need to be adapted to include large loading doors on the main deck, structural reinforcement for the increased payload and adapted loading and cabin systems. The conversion of used passenger aircraft to freighters consists in the following steps: (i) development of supplementary type certificate (STC) that need to be certified by the local airworthiness authority of the converting company and by that of the country

where the aircraft will predominantly be employed, (ii) production of the conversion kits about which the STC is granted, containing a cargo door and the relating structural parts of the future freighter, (iii) actual conversion of the aircraft.

20. The Parties submit that the cargo conversion market is relatively new but a very dynamic one and in the process of rapid expansion. On the technical level barriers to entry are very low. Companies active in aircraft manufacturing or in the maintenance of aircraft components have the technological capability to enter the conversion market. Several can develop and own the same STC and also be able to apply different technical solutions to it. Furthermore, it is technically possible to develop STCs independently from the passenger aircraft manufacturer, provided there is financial support by a launching customer. This would point to the existence a single product market for cargo aircraft conversion.
21. However, for the purposes of this decision, it is not important to further delineate the relevant product market in cargo aircraft conversion, as in all alternative market definitions, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Regional aircraft

22. The Parties acknowledge the Commission's definition of the regional aircraft market in case *M.053 - Aerospatiale-Alenia/de Havilland*, as comprising aircraft of up to 100 seats. In that case the Commission had indicated that a distinction should be made between turboprop aircraft and jet aircraft, and also that there could be a further distinction between different categories based on passenger capacity (20-40 seats, 41-60 seats, 61-70 seats and 71-100 seats).
23. However, for the purposes of this decision, it is not important to further delineate the relevant product markets for regional aircraft as indicated in the *Aerospatiale-Alenia/de Havilland* decision, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Aerospace components

24. The market comprises the design, manufacture and assemblage of a wide range of aircraft components. Each type of component could be regarded as a separate market due to the very high degree of specialisation on both the supply and demand side.
25. However, for the purposes of this decision, it is not important to further delineate the relevant product market for aerospace components, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Relevant geographic markets

26. The market investigation confirmed the Parties' position that the geographic market in all the above markets is worldwide. As regards the Maintenance, Repair and Overhaul market it is widely confirmed that the geographic market for line and base maintenance services is regional or even local.

Competition assessment

Cargo aircraft conversion

27. There is a certain degree of horizontal overlap between the Parties' activities in the market of cargo aircraft conversion, especially in large commercial aircraft where DASA's subsidiaries DaimlerChrysler Aerospace Airbus GmbH ("DA") and EFW, and AM's subsidiary Sogerma, have STCs for certain Airbus aircraft (primarily A300-B4). However, first, the division of labour reflects the worksharing agreement between DASA or EFW and Sogerma that have evolved out of similar arrangements developed between the Airbus partners for the manufacture of new freighters, and each contributes its components to a joint freighter conversion kit Secondly, the Parties' combined share in the cargo aircraft conversion market is below [0-10%]. And finally, the customers of conversion services are large and sophisticated air transport companies, airlines and leasing companies with significant buyer power and little loyalty to the companies performing the conversion.

Regional aircraft

28. Aérospatiale-Matra is a manufacturer of turbo-prop regional aircraft through its 50% shareholding in ATR *GIE* with Alenia Aerospazio. Furthermore, DASA and Aérospatiale-Matra have each a remote relationship with two of the other main players in the regional aircraft market: DASA holds a 20% minority shareholding in Fairchild Dornier Luftfahrt BeteiligungsGmbH, and AM together with Dassault Aviation, Thomson-CSF and SNECMA (together "French Industry") have signed in October 25, 1999, an agreement with the Brazilian regional aircraft producer Embraer. Pursuant to this agreement, the French Industry acquires a stake in Embraer corresponding to 20% of Embraer's voting stock and 9% of its share capital.
29. However, these interests do not confer any controlling rights to the parties. Furthermore, the proposed transaction will not change the situation in the market segment of regional aircraft of 61-70 seats, where, in terms of world wide orders placed in 1997 and 1998, ATR holds the second position. Indeed, Fairchild Dornier and Embraer are not active in that market segment, whereas the Parties' competitor Bombardier remains the leader.

Aerospace components

30. As regards vertical integration aspects, the market investigation shows that the proposed transaction will have no major and immediate impact on current contractual relationships with third parties (suppliers of outsourced products or customers) for current Airbus and other programmes. In particular, the Commission's investigation indicates that, for current programmes, switching of suppliers can be either contractually difficult or extremely costly and time consuming and might endanger on-time supply of ordered aircraft. And it appears from the Commission investigation that, in view of the nature and terms of contractual arrangements, the operation will have no substantial impact on the parties' supplies to third-party aircraft manufacturers.
31. In the light of the above, it appears that the notified operation does not create or strengthen a dominant position in commercial aircraft as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

B. TELECOMMUNICATION EQUIPMENT

32. Both AM and DASA are active in the area of telecommunications, respectively through Matra Nortel Communications ("MNC") and Nortel DASA Network Systems GmbH

& Co (“Nortel/DASA”), their respective joint ventures with Nortel Networks. CASA has no activities in the telecommunications sector.

33. Although each of MNC and Nortel/DASA are active in a variety of products and services, including (for Nortel/DASA) the production and sale of satellite ground stations or (for MNC) the development and sale of professional mobile radio equipment, the only area where the operation might lead to horizontal or vertical overlaps is the telecommunication equipment sector.

Relevant product markets

34. MNC and Nortel/DASA are both active in fixed telecommunication equipment. In this sector, MNC and Nortel/DASA distribute certain (essentially Nortel Networks’) products, while MNC also manufactures Private Automatic Branch eXchanges (“PABXs”), and Nortel/DASA offers integrated network solutions (including the resale of telecommunications equipment).
35. It appears from the Commission enquiry that this sector might be categorised according to a double segmentation by activity (i.e. manufacture, distribution and offer of integrated solutions), and by product type (such as switches, PABXs, etc.).
36. First, according to certain third parties, a distinction could be made between the manufacture of telecommunication equipment, the distribution of telecommunications equipment, and the offer of integrated solutions. This is so because there appear to exist specialised companies, which operate only on one of these levels. On the other hand, other third parties indicated that customer demand is characterised by a need for customised services offered through turnkey solutions, and that most telecommunication equipment manufacturers have developed direct sales and distribution channels. The distinction between the production, the distribution and the resale levels might therefore be more relevant for products (e.g. PABXs) sold to smaller customers needing only a limited range of equipment than for products (e.g. data network equipment) usually sold in the context turnkey solutions.
37. Secondly, it appears that the telecommunication equipment sector could also be segmented according to the type of telecommunications equipment concerned. More specifically, the parties are active in data network equipment products, PABXs, and Key Telephone systems. In previous Commission decisions², it was suggested that certain data network products (such as Wide Area Network switches, aggregation devices, etc.), as well as PABXs, might constitute distinct product markets. The results of the Commission enquiry broadly confirm these definitions, and they suggest that (i) within data network equipment, a distinction could be made between switches, routers, and remote access concentrators; and (ii) Private Branch eXchanges (PBXs) belong to specific product markets. However, it also appears that manufacturers and distributors may offer a wide range of products, to be sold individually or in the context of turnkey solutions. This might mean that, for these activities, a variety of products might have to be combined into broader product markets.
38. However, for the purpose of this case, it is not necessary to further delineate the relevant product markets for telecommunication equipment, as in all alternative market

² See cases No IV/M.1263 – Nortel/Bay, IV/M.1442-Lucent/Ascend, and IV/M.1439-Telia/Telenor

definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

39. Previous Commission decisions³ suggest that the geographic markets for the manufacture data network equipment are at least EEA-wide, and that there may be national markets for the distribution of PABXs.
40. The parties submit that the geographic markets for telecommunications equipment are at least EEA-wide in scope, and may even be global. These conclusions have been broadly confirmed by the results of the Commission enquiry, except for the markets relative to distribution, and for the markets relative to PBXs. In these sectors, there are indications that the geographic markets might be narrower (and even possibly worldwide), since it appears that, (i) despite the emergence of centralised or pan-European distributors, distribution is usually organised on a national basis; and (ii) PBXs providing interfaces to be connected to public networks, they still require type approvals on a national basis.
41. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic markets for telecommunication equipment, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competition assessment

42. If the geographic markets were EEA-wide, the operation would not lead to any affected markets, as the combined market shares of MNC and Nortel/DASA do not exceed 15% on any type of fixed telecommunications equipment product.
43. Alternatively, if there were national product markets, the only overlap would concern the distribution of PABXs in Germany, where the parties' combined market shares would remain below [5-15%]. The operation would also lead to a vertical integration between MNC's manufacturing activities (in PABXs) and Nortel/DASA's activities on the downstream sectors of distribution and sale of integrated network solutions, but the parties' market shares on each segment would not exceed [5-15%].
44. Consequently, the proposed concentration does not create or strengthen a dominant position in telecommunication equipment as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

C. HELICOPTERS

45. AM and DASA are both active in the manufacture of civil and military helicopters through their joint venture Eurocopter Group ("Eurocopter"). Eurocopter was established in 1992 through the merger of the helicopter activities of Aérospatiale and the Daimler-Benz subsidiary Messerschmitt-Bölkow-Blohm ("MBB"). Although CASA is not engaged in the production of helicopters, it supplies certain components for helicopters in the framework of offset programmes. CASA is also active in the

³ See cases No IV/M.1263 – Nortel/Bay, IV/M.1442-Lucent/Ascend, IV/M.1439-Telia/Telenor, and COMP.M1840-KKR/Bosch Telekom Private Networks

maintenance and upgrade of civil and military aircraft, including helicopter maintenance, component overhaul and repair and product support services through its wholly-owned subsidiary Aeronáutica Industrial S.A. (“AISA”).

46. The notifying parties argue that the creation of EADS does not lead to a concentration within the meaning of the Merger Regulation and in any event does not result in any major impact on the helicopter market. At present, Eurocopter is jointly controlled by AM and DASA. Following the proposed operation, Eurocopter will be solely controlled by EADS. The operation will also lead to the contribution to EADS of CASA’s activities in the field of manufacture of certain helicopter components and helicopter maintenance, component overhaul and repair and product support services. Consequently, such a change in the control of Eurocopter brought about by the notified operation is considered a concentration within the meaning of the Merger Regulation.
47. The competition aspects relative to the Eurocopter and the relationship between Aérospatiale and the MBB were already assessed in the *Aérospatiale/MBB*⁴ decision. In that decision the Commission came to the conclusion that Eurocopter was jointly controlled by AM and MBB and found that AM and MBB transferred the whole of their helicopter activities to Eurocopter and withdrew permanently from the helicopter market.⁵ The notified operation will not materially alter this assessment, and these aspects will therefore not be further discussed in the present decision. The competition analysis will therefore focus on the relationship between the helicopter-related activities of CASA and the existing Eurocopter structure.

Relevant product markets

Civil and military helicopters

48. In the previous Commission decision concerning this sector, the Commission concluded that in spite of the interdependency of the military and civil helicopter business, different relevant markets for civil and military helicopters are, however, to be distinguished, given the essential differences between civil and military helicopter programmes with regard to the products characteristics, the structure of demand and the conditions of competition.⁶
49. According to the notifying parties, the civil applications include offshore activities, VIP transport, para-public services (e.g. police and fire-fighting activities, medical emergencies and rescue operations) and transport. Military applications focus more on tactical transport, utility, combat and special missions. Alternatively, the parties put forward a segmentation based on different types of equipment following the classification into “light” single engine helicopters (for example, Ecureuil AS-350, EC 120 models), “light” twin engine helicopters (for example, Ecureuil AS-355, EC 135 models) “medium” helicopters (for example, Dauphin model, BK 117 models), “medium-heavy” helicopters (for example, Super Puma, NH 90 models), “heavy” helicopters (for example, MI 38 Project) and “specialised” helicopters (for example, Tiger). The parties conclude, however, that the final decision on the exact scope of the relevant product market can be left open.

⁴ See Case IV/M.017-Aérospatiale/MBB, Commission decision of 25 February 1991.

⁵ See paragraph 3 of Case IV/M.017-Aérospatiale/MBB.

⁶ See paragraph 9 of Case IV/M.017-Aérospatiale/MBB.

50. The market investigation generally supports the Commission's previously used distinction of the relevant product market into separate markets for civil and military helicopters. The investigation has provided some indications for a segmentation of the helicopter market for example on the basis of the engine (single/twin), weight (<3.5 tonnes/< 7 tonnes/>7 tonnes) or size of the helicopter (1-8 seats/9-15 seats/>16 seats) and as regards, in particular, military helicopters according to the mission (battlefield, naval, transport) and weight of the helicopter. For the purpose of this case, it is not, however, necessary to further delineate the helicopter markets, as even with a narrower definition of the relevant product market, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Support and maintenance services for helicopters

51. The notifying parties state that in view of the life expectancy of a helicopter exceeding 30 years on average, product support and customer service form a significant part of the business of Eurocopter. According to the parties, customer service mainly includes training services, technical maintenance documentation for helicopters, repairs and supply of spare parts for the in-service Eurocopter fleet. In 1998, support activity accounted for 40% of Eurocopter's total turnover, whereby the commercial activity comprising of the manufacture of new helicopters and development activities accounted for 39% and 12% of the turnover respectively. The product support services include the following activities: airframe and components maintenance and repair, helicopter specific equipment maintenance and repair, spare parts, technical assistance, training and maintenance support and helicopter upgrade support engineering services.
52. The Commission found in *Aérospatiale/MBB* decision that product support segment (sale of spare parts, repair, maintenance and training) does not constitute a separate product market, as such activities depend on the manufacturers fleet being in service and thus on the sale of helicopters. The notifying parties maintain that the intensity of demand of the service varies according to the age and size of the helicopter fleet and the capability of the customer of carrying out routine repairing and maintenance work. In general, military customers tend to assure these operations on their own and confine themselves to request the delivery of exchange parts for modernisation purposes. Most civil customers tend to be small companies that outsource such activities.
53. As regards the support activities for helicopters, the market investigation generally supports this finding. Support activities only arise from the sale of helicopters and are closely linked to the manufacturer by requirements of product liability and airworthiness. It has been brought to the Commission's attention that for some support activities, for example training, customers can address other service providers, though only with the manufacturer's permission and/or license.
54. As to the market for maintenance services (maintenance, repair, overhaul, upgrades) for helicopters, the notifying parties maintain that maintenance services markets for helicopters and fixed-wing aircraft are separate, although in terms of know-how and skills relating to the engine and certain airframe components the two markets do not pose substantial barriers to entry *vis-à-vis* each other. This is mainly due to the more specific skills necessary to carry out maintenance work on the rotor section of the helicopter (blades and associated equipment) having direct impact on the airworthiness of the helicopter and the specialised equipment used for such work. In view of the more limited operational range of helicopters (5 hours flying time), the demand for helicopter maintenance depots is also denser than for many fixed-wing aircraft. The notifying party also makes reference to "Integrated Logistical Support" ("ILS") as a

new trend consisting of a comprehensive system facilitating the operational use of the helicopter throughout its life cycle.

55. The notifying party identifies three levels of maintenance service for helicopters. *High-level maintenance* is provided by manufacturers and manufacturers' authorised service centres entailing specific know-how and engineering skills relating to a particular helicopter model that only the OEM can provide, either directly or via a licensed service provider. This category of maintenance work is said to correspond to heavy maintenance for fixed-wing aircraft. *Intermediate-level maintenance* services are, depending on the customer, performed either by (i) maintenance centres which have obtained authorisation to the appropriate level by the Airworthiness Authority (Military or Civil); or (ii) by those customers that have been granted the relevant authorisation. This category of maintenance work can be compared to base maintenance of fixed-wing aircraft. *Operational-level maintenance* is typically carried out by the helicopter operators themselves and thus corresponds to line maintenance of fixed-wing aircraft.
56. In respect of regular maintenance of helicopters, third parties have indicated that such activity typically constitutes a separate commercial activity though usually licensed or otherwise approved by the manufacturer for reasons of quality and airworthiness. This is said to apply to the civil and increasingly also to military market for helicopters. More thorough maintenance, requiring the examination of all significant components and replacing worn components, is carried out by the civil helicopter operator itself, the military, or the manufacturer or the manufacturer's licensee. It appears that in each case the linkage with the manufacturer remains strong as regards the repair schemes, maintenance schedule, technical publications and training.
57. Given the activities of CASA through AISA in particular in the maintenance, product support and upgrade services for civil and military helicopters, which could constitute separate downstream markets to the manufacture of helicopters, the combination of CASA's activities into EADS will be assessed in more detail below. It appears, however, that for the purpose of this case it is not necessary to further delineate the relevant markets, as even with a narrower definition of the relevant product market, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

58. In the *Aérospatiale/MBB* decision, the Commission defined the geographic market for civil helicopters to be world-wide in scope. With respect to the military helicopters, the market was considered national as far as those Member States, which have their own national helicopter industry, were concerned. Outside the markets with national helicopter production, competition for military helicopters was considered to take place on a world-wide level. This definition of the relevant geographic market is supported by the notifying parties and by the third parties contacted in the course of the Commission's market investigation.
59. As to the geographic scope of the separate markets for maintenance service of helicopters, it appears from the market investigation that the maintenance activities for military fleet are typically carried out on a national basis, either by the manufacturers or national military sources. For civil helicopters each manufacturer has usually established a national or a wider network of maintenance outlets each having geographically more limited radius than is the case for fixed-wing aircraft.

Competition assessment

Civil and military helicopters

60. Eurocopter is a leading helicopter manufacturer of both civil and military helicopters in the world, and accounted for approximately [35-45%] of the market for civil helicopters and approximately [15-25%] of the military helicopter market. However, given that the manufacture of helicopters by AM and DASA is carried out solely through Eurocopter, and that CASA has no manufacturing platform of its own, but simply participates in Helicopteros Eurocopter S.A. (“HESA”), a joint venture with Eurocopter responsible for the marketing and contract negotiations for sales of the civil helicopters of Eurocopter in Spain, as well as for the supply of spare parts and components produced by Eurocopter to the Spanish customers, it appears that the notified operation does not affect competition in this sector.

Support and maintenance services for helicopters

61. As already mentioned, CASA through its subsidiary AISA is active in the maintenance, repair, overhaul for civil and military helicopters and components for models of different manufacturers, including those of Eurocopter, Boeing, Bell, Agusta-Bell, Sikorsky and MD. AISA also supplies spare parts and components for various manufacturers' platforms and provides technical assistance and maintenance support at the customer's site. AISA is also active in helicopter maintenance and operation service engineering as well as modernisation, upgrades, system integration and installation of options in various helicopter models.
62. In the framework of offset programs, CASA has also been active in the manufacture of specific components for helicopter programs and currently supplies 47% of the components (tail cone, pylons and some structural frames) for Eurocopter's Super-Puma types MK-1 and MK-2. In 1999, this activity created a turnover around EUR [...]. The parties do not expect that the present transaction would lead to any significant changes in CASA's situation as a supplier to different helicopter manufacturers. The market investigation has not provided indications of concerns being raised in this respect.
63. The operation will also create some vertical or conglomerate integration between these activities by CASA and Eurocopter's helicopter business. However, the market investigation indicates that the proposed transaction and the transfer of CASA's helicopter-related activities to EADS will have no major and immediate impact on the markets for helicopter maintenance or current contractual relationships with third parties.
64. In the light of the above, it can be concluded that the notified operation does not create or strengthen a dominant position in the maintenance of civil or military helicopters as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

D. SPACE

65. Aérospatiale-Matra and DASA are active in the supply of space systems (especially satellites, space infrastructure, launchers, ground stations) as well as certain equipment products for space systems. They primarily operate in this sector through Astrium⁷, (a company jointly controlled by Aérospatiale-Matra, BAe Systems and DASA) and Aérospatiale-Matra Lanceurs ("AML", a subsidiary of Aérospatiale-Matra). CASA is also active in the space sector, where it essentially supplies composite equipment for space systems.
66. The operation will lead to the contribution to EADS of the Aérospatiale-Matra' and DASA's interests in Astrium, of the space activities (such as AML) previously retained by Aérospatiale-Matra and DASA, and of CASA's space business. The competition aspects relative to the relationship between Aérospatiale-Matra and Astrium, and between DASA and Astrium, have already been assessed in the *Astrium* decision. The notified concentration will not materially alter this assessment, and these aspects will therefore not be further discussed in the present decision. The competition analysis

⁷ See Case COMP/M.1636-MMS/DASA/Astrium

below will focus on the combination of CASA's business with the existing Aérospatiale-Matra/DASA/Astrium structure.

Relevant product markets

Satellites

67. Satellites are complex spacecraft orbiting or revolving around a celestial object. As indicated in previous Commission decisions⁸, four main categories can be distinguished: communications satellites, navigation satellites, observation (remote sensing) satellites and scientific satellites.
68. Satellites can be utilised for civilian as well as military applications. Furthermore, in the civil sector, a distinction is often made between a commercial segment, comprising those satellites (essentially communication satellites) sold to commercial operators, and an institutional segment (essentially consisting of observation and scientific satellites) essentially sold to space agencies such as the NASA, the French Centre National d'Etudes Spatiales (CNES) or the European Space Agency (ESA).
69. In the *Astrium* decision, the Commission indicated that a distinction should be made between communication satellites on the one hand, and observation and scientific satellites on the other hand, because they do not involve the same technological skills and do not address the same customers. It also indicated that there could be distinct product markets for military satellites and civil satellites (essentially because the conditions of competition are different between military and civil applications), and that a further segmentation by orbit type could be taken into account. However, for the purpose of this case, it is not necessary to further delineate the relevant product markets for satellites, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Satellite equipment

70. A satellite essentially consists of a platform and a payload. The platform is the physical structure of the satellite, and typically ensures its stability and thermal control, maintains its orbit, and supplies electrical energy. The payload governs the main parameters of the platform and is designed to perform the particular tasks for which the satellite was put in orbit. Both the platform and the payload are in turn composed of a number of sub-systems (such as the propulsion system, the thermal control sub-system, etc.) and equipment (such as solar generators, satellite structure or antenna reflectors).
71. It appears from the results of the Commission enquiry that each of these products might constitute a distinct product market. In particular, there appear to be distinct product markets for satellite structures, which form the mechanical backbone of the satellite, and antenna reflectors, a component of satellite antennae used to concentrate and direct the signal energy and provide the required transmission power.
72. Although each prime contractor has specific satellite designs, satellite structures usually comprise two different types of products: a central tube, around which the satellite is assembled, and side panels. These structures may be made of composites (especially for central tubes), or of sandwich skins with an aluminium honeycomb core. According to some third parties, panels and central tubes should each form a

⁸ See Case IV/M.1185-Alcatel/Thomson-CSF-SCS

distinct product market. Firstly, it appears that structural panels and central tubes are not substitutable with each other from a demand side perspective, since central tubes form the core of the satellite while structural panels are used for the top and sides of the satellites. Secondly, it appears from certain third parties that the supply-side substitutability between structural panel and central tubes may be limited, in that the two products require different tooling and qualification efforts. Overall, the results of the Commission investigation therefore point in the direction of separate product markets for panels and central tubes.

73. Antenna reflectors are part of the satellite payload. They are essentially used as a component for the antennae of telecommunication satellites, where they concentrate and direct the signal energy and provide the required transmission power. A typical geostationary telecommunication satellite comprises 3 to 7 reflectors of different sizes. The parties submit that antenna reflectors should be further categorised by size: reflectors with a diameter below 0.5m (which can be manufactured in aluminium), reflectors with a diameter between 0.5m and 4m (which are manufactured in composite materials, and where the parties are active), and reflectors with a diameter above 4m (which must be inflatable or deployable). This segmentation has been broadly confirmed by the Commission enquiry.

Space infrastructure

74. Space infrastructure comprises manned and unmanned space systems which are used several times for different mission purposes, mainly in the field of research under space conditions (microgravity, vacuum, radiation) but also for in-orbit applied technology and tests. Customers for space infrastructure are essentially space agencies such as NASA, ESA or European national agencies.
75. Space infrastructure may be broken down into narrower product categories: unmanned reusable/retrievable platforms, manned or man-tended laboratories or habitats (e.g. space stations), servicing systems, payload facilities, and outpost infrastructure. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic markets for space infrastructure, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Launcher systems, sub-systems and equipment

76. Launchers are made up of systems (e.g. stages), sub-systems (e.g. propulsion equipment, attitude control products, etc.) and equipment. It appears that each of the products procured through competitive bidding procedures would belong to relevant product markets. However, for the purpose of this case, it is not necessary to further delineate the relevant product markets for systems and sub-systems for launchers, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

Commercial communication satellites

77. In previous Commission decisions⁹, the market for communication satellites was considered to be global, as commercial customers purchase these products without being submitted to geographic considerations.

Civil institutional satellites, space infrastructure and launchers

78. There appears to be a Western European¹⁰ market for civil institutional satellites and equipment, space infrastructure and launchers. This is because, in Western Europe, institutional satellites, space infrastructure and launchers are primarily purchased by ESA, whose procurement of satellites and equipment products is subject to a geographic “juste retour” principle enshrined in the ESA Convention requiring ESA i) “to grant preference to the fullest extent possible to industry in all [ESA] Member States”, and ii) “to ensure that all [ESA] Member States participate in an equitable manner, having regard to their financial contribution”.
79. There might also be national markets for institutional satellites in those Member States where national space agencies apply similar procurement procedures at the prime contractor level. In particular, there would appear to be a national market in Spain, where the national space agency (INTA) has recently procured a mini-satellite (Minisat) from CASA through direct negotiation, no other company being consulted for this project. However, for the purpose of this case, it is not necessary to further delineate these geographic markets because, in the case of national or worldwide markets, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Military satellites

80. It appears that certain Member States procure military satellites through competitive processes involving prime contractors in Europe and the United States : for instance, in communication satellites, Hughes seems to have been engaged in competitions for the Spanish Hispasat I satellites, while Lockheed Martin participates in the competition for the supply of the UK Skynet 5B satellite.
81. However, on the other hand, certain Member States would appear to source military satellites from domestic producers. Especially, the French MOD indicated that, as a rule, it procured military satellites through open competition between domestic prime contractors (i.e. MMS and Alcatel Space Industries (Alcatel Space)). Given that the conditions of competition would be restricted to domestic prime contractors, there appears to remain a national market in France for the supply of military satellites.

⁹ See case No IV/M.437 – Matra Marconi Space/British Aerospace Space Systems, and case No COMP/M.1636-MMS/DASA/Astrium.

¹⁰ For the purpose of this case, Western Europe means the EEA and Switzerland (and therefore includes all the Member States of the European Space Agency)

Satellite equipment

82. There appear to be distinct relevant geographic markets for each type of application. For institutional applications, where ESA procurement is subject to a “juste retour” rule, the geographic markets seem to be Western European-wide.
83. For commercial applications, there does not seem to be specific restrictions on the demand side, so that prime contractors can theoretically procure from any competitive supplier worldwide. However, satellites, space components and sub-systems produced by USA-based companies are subject to an export licence arrangement managed by the Department of Defense in the USA. A recent change in the U.S.A International Traffic in Arms Regulation (ITAR) has changed this export licence system, transferring the export of commercial communication satellites and equipment back to the jurisdiction of the Department of State from the Department of Commerce. According to third parties, the technologies involved in composite structures and antenna reflectors might be sufficiently sensitive so as to make exports by USA-based suppliers risky and difficult. In particular, in that context, it is unlikely that EEA-based prime contractors could consider USA-based suppliers for the provision of central tubes. This is so because prime contractors usually have only one source of supply for the central tubes used for a given platform, since the production of central tubes is therefore subject to customer-specific investment and economies of scale.
84. Those risks might be even more important in the case of military satellites. Furthermore, in view of the sensitivity of the information needed for the design and qualification of antenna reflectors, there are indications that certain geographic restrictions may be imposed on the selection of the reflector supplier.
85. Overall, the results of the Commission enquiry therefore suggest the existence of EEA-wide markets (or at least of markets where USA-based suppliers would be excluded) for central tubes and antenna reflectors. This is further indicated by the fact that the shares of sales of USA-based manufacturers of composites are very different in the USA and in the rest of the world: for instance, although COI accounts for 26% of sales of antenna reflectors world-wide, it only represents 7% of sales in the EEA.

Competition assessment

Satellite structures and antenna reflectors

86. CASA and AML manufacture satellite structures and antenna reflectors. On the commercial or military markets, the operation would not raise competition concerns if the market were worldwide, since the parties’ combined shares of sales would not exceed 25% and since would remain subject to the competition from USA-based suppliers such as COI or TRW. However, if the markets were EEA-wide, the merged entity would have market shares around 60-70% in antenna reflectors, and would virtually be the only supplier of central tubes to third parties.
87. As indicated in the *Matra/Aérospatiale* decision, insofar as AML achieves [a considerable share] of its turnover in each of central tubes and antenna reflectors with Alcatel Space, AML’s market power ultimately depends on Alcatel Space’s ability to turn to other competitive suppliers: if Alcatel Space could credibly change suppliers, AML would not be able to raise prices or impose unacceptable contractual conditions to its customers.

88. However, third parties have indicated that (i) with the exception of USA-based suppliers, AML is currently the only possible competitive supplier of central tubes and antenna reflectors (the other suppliers either lacking certain technologies or being part of vertically integrated prime contractors not selling the products they manufactured to other communication satellite prime contractors); and (ii) CASA is the most credible alternative to AML in the short term, and in particular is the only credible entrant before the end of [...], when the long term agreement between Alcatel Space and AML relative to the supply of composites terminates.
89. In particular, it appears that central tubes are developed jointly between prime contractors and suppliers, and that, accordingly, central tube manufacturers not only have to master the production process for composites, but also need sufficient design capabilities and experience in certain fields such as thermal control. Third parties have indicated that CASA had capability in most fields and might therefore be a credible entrant in the short term, but that other suppliers were not considered to be sufficiently credible entrants within the next 2-3 years.
90. Furthermore, in antenna reflectors, it appears that prime contractors increasingly use two technologies called dual gridded reflectors and thin stiffened shell reflectors, which seem to account for 70-80% of demand at present.
91. With respect to thin stiffened shell reflectors, it appears that AML and CASA collectively account for [65-75%] of sales in the EEA, the next largest supplier being Alenia ([5-15%]). Furthermore, it appears that Alenia may not be a credible alternative to AML, since it is a competitor to Alcatel on the downstream market for antenna subassemblies (comprised of antenna reflectors, source and mechanism).
92. In dual gridded reflectors, AML accounts for approximately [65-75%] of sales in the EEA, the next largest competitor being Alenia ([0-10%]). However, as indicated above, that Alenia may not be a credible alternative to AML, since it is a competitor to Alcatel on the downstream market for antenna subassemblies (comprised of antenna reflectors, source and mechanism). Any alternative to AML would therefore be a new entrant. In that context, it appears from the Commission investigation that two suppliers might be considered : Melco, a Japanese manufacturer, and CASA.
93. Third parties have indicated that, although CASA has not manufactured dual gridded reflectors, it is more advanced than Melco in that sector. This is so because, although CASA has not produced dual gridded reflectors, it has carried out sufficient R&D activities for a full development to be completed within [...], while Melco has produced only one dual gridded reflector, which is considered not to meet today's architecture requirements and to be too small, so that extensive activities would therefore be required for Melco to become a credible alternative to AML.
94. In that context, there are risks that the operation would eliminate AML's most credible alternative in central tubes, thin stiffened shell and dual gridded reflectors, and that no other alternative could be developed before the end of [...], when Alcatel Space's long term contracts with AML will be terminated. There are therefore serious risks that the operation would create or strengthen a dominant position on the markets for antenna reflectors and central tubes.

Commercial communication satellites

95. In addition to the horizontal aspects as examined above, the operation will also lead to a vertical integration between the parties' equipment activities and Astrium's downstream activities (either at the sub-system level or at the prime contractor level).
96. More specifically, the operation will create a vertical integration between CASA's sales of harnesses (a component for power conditioning and distribution systems to be fitted within satellites) and Astrium's activities in power conditioning and distribution systems. However, the parties' market shares in harnesses, and power conditioning and distribution are each below 10% worldwide, and CASA and Astrium will remain subject to the competition from other equipment suppliers at each level.
97. The transaction will also lead to a vertical integration between the parties' supplies of satellite equipment (such as satellite structures and antennae reflectors) and Astrium's activities at the downstream prime contractor level. However, Astrium's market shares for commercial communication satellites are below 15% worldwide, and it will remain subject to the competition by other prime contractors which are not dependent on the parties for their supplies of equipment, so that there is no indication that the operation creates or strengthens a dominant position in commercial communications satellites as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

Civil institutional satellites

98. CASA, Aérospatiale-Matra and Astrium are active in the supply of equipment for institutional satellites; Astrium and CASA are also active as prime contractors for institutional satellites.
99. At the prime contractor level, Astrium primarily sells to ESA, while CASA's activities are limited to the supply of a mini-satellite (Minisat) to the Spanish space agency (INTA). If there were a national market in Spain, Astrium and CASA would therefore be active in distinct geographic markets. If, alternatively, a single Western European geographic market was considered, the operation would create a horizontal overlap at the prime contractor level. However, even in this case, the operation would not materially affect the conditions of competition, because CASA's activities only concern mini-satellites, a segment where a number of alternative prime contractors (such as Alcatel Space, Kayser-Threde, OHB Systems) are active and could offer a credible alternatives to Astrium' and CASA's products.
100. The operation will also lead to a vertical integration between CASA's sales of satellite equipment and Astrium's prime contracting activities. Given Astrium's market shares at the prime contractor level ([45-55%] between 1994 and 1998), and the parties' shares of sales in equipment, it is necessary to examine whether the merged entity would be in a position to shut out competing prime contractors.
101. However, there is no indication that the operation could lead to a vertical foreclosure of the prime contracting level to Astrium's main competitors (namely Alcatel Space and Alenia). Observation and scientific satellites are tailor-made for each application and may not require the same technologies as commercial satellites, so that prime contractors may therefore turn to a wider range of equipment suppliers. In particular, it appears that Alcatel Space and Alenia will be in a position to find competitive sources of supplies other than Aérospatiale-Matra or CASA for the equipment concerned.

Furthermore, even if the parties were in a position to raise the prices for the equipment they sell, such price rise would have to be limited in view of ESA's capacity to detect and remedy this behaviour; given the value of the equipment concerned, it is unlikely that the parties could raise their rivals' costs by more than 1%.

102. Consequently, the proposed concentration does not create or strengthen a dominant position in commercial institutional satellites as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

Military satellites and equipment

103. The operation will result in a vertical integration between Astrium's prime contractor activities and CASA's equipment business. For the same reasons as those indicated above, there is no indication that the operation could have adverse consequences on competition in military observation and scientific satellites or on the open market for military communication satellites.
104. In the French market for military communication satellites, competition at the prime contractor level is between Astrium (a joint venture between Aérospatiale-Matra, DASA and BAe Systems) and Alcatel Space. In view of the fact that Alcatel Space would need thin stiffened shell reflectors and central tubes for these communication satellites, and given the above discussion as to the parties' market position in those sectors, there are serious risks that, after the operation, the parties could weaken Alcatel Space's competition position in military satellites.
105. There are therefore serious risks that the operation would create or strengthen a dominant position on the French market for military communication satellites.

Space infrastructure

106. Astrium and Aérospatiale-Matra are both prime contractors for space infrastructure. CASA and Aérospatiale-Matra are also active at the equipment level, where they supply structures for space infrastructure.
107. The operation will therefore result in a horizontal integration between Aérospatiale-Matra and CASA's activities in structures. However, Aérospatiale-Matra and CASA's combined shares of sales for structures do not appear to exceed 10% over the 1995-1999 period, and they remain subject to the competition from other structure suppliers, such as Contraves or Alenia.
108. The operation will also lead to vertical integration between the parties' equipment business on the one hand, and Aérospatiale-Matra' and Astrium's prime contracting activities. Given that Aérospatiale-Matra and Astrium collectively accounted for [60-70%] of the value of European space infrastructure programmes during the period from 1996 to 1998, it is therefore necessary to examine whether the operation could result in a vertical foreclosure in the equipment and the prime contracting markets.
109. However, it appears that space infrastructure is developed and produced through a very limited number of programmes. The space infrastructure products to be manufactured or developed within the foreseeable future will therefore result from the few existing or forthcoming ESA programmes, and the competition impact of the transaction therefore needs to be assessed in the context of these programmes.

110. In that context, first, the operation does not appear to have any adverse consequences on existing programmes for space infrastructure products, where the prime contractors and suppliers have already been selected and where the contractual conditions have already been defined.
111. And secondly, there is no indication that the operation would materially affect the conditions of competition for future products, to be developed through existing development programmes and forthcoming development programmes within the foreseeable future. In view of the parties' market shares of structures, it appears that the merged entity will not be in a position to shut out competing prime contractors; and, given the presence of alternative prime contractors and the "juste retour" rule governing the provision of space infrastructure, it also appears that Astrium will not be in a position to foreclose the structure markets to other suppliers.
112. In the light of the above, it appears that the notified operation does not create or strengthen a dominant position on the markets for space infrastructure as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

Launchers

113. Astrium, CASA and Aérospatiale-Matra are engaged in a number of activities for the Ariane launchers. First, at the prime contractor level, Aérospatiale-Matra is the "architecte industriel" of the Ariane launchers, and is therefore responsible for the technical management of the development programmes. Secondly, at system level, Aérospatiale-Matra and Astrium are responsible for the integration of most stages of the current Ariane 5 launchers. Finally, at sub-system level, Aérospatiale-Matra, Astrium and CASA each supplies certain equipment for the Ariane 5 launchers.
114. Ariane launchers are developed and produced through international (government-funded) programmes, where suppliers are selected during the development phase and usually remain unchanged for the subsequent production and launch phase. The operation will not have any adverse impact on existing launchers, as suppliers have already been selected during the development phase. The competition impact of the operation therefore needs to be assessed in the context of future products, to be developed through existing development programmes and forthcoming development programmes within the foreseeable future.
115. As far as existing development programmes for expendable launchers are concerned, it appears that the only activity expected by the parties in the foreseeable future relates to the recent "Ariane-plus" programme, intended to increase the payload capacity of the Ariane 5 launcher. This programme mainly involves the development of a new cryogenic upper stage (called ESC) for Ariane 5 and the development of a new cryogenic engine (called VINCI). The main responsibilities for this programme (including the selection of the ESC integrator, Astrium, and the VINCI contractor, Snecma) have already been defined. In this context, the main competitions in which CASA could participate concern a payload adapter and piping for the VINCI motor. Furthermore, there is no indication that, after the operation, Astrium (as stage integrator) could favour CASA, since the consultation for the payload adapter and piping for the VINCI motor will be led by third parties (respectively the French space agency and SEP).

116. In the foreseeable future, there may also exist new development programmes for a smaller launcher, or for a reusable launch vehicle. However, at this stage, there is no indication that the operation could have adverse effects on competition for these programmes.
117. Furthermore, in any event (including other possible launcher future developments), suppliers are subject to a very limited number of sophisticated customers (at present, only CNES, ESA and Ariespace in Western Europe), and there seems to be effective competition in the field of launch services. In that context, customers appear to have sufficient countervailing buying power to constrain the competitive behaviour of their suppliers, as well as strong incentives to use this power. Consequently, there appears to be no possibility for suppliers either to raise prices or to impose unacceptable contractual conditions.
118. In the light of the above, it appears that the notified operation does not create or strengthen a dominant position in launcher systems, sub-systems and equipment as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

E. GUIDED WEAPONS

119. Aérospatiale-Matra and DASA are both active in guided weapons and guided weapon systems (“GW/GWS”), both directly and through a number of joint ventures. Aérospatiale-Matra and DASA are also active at the equipment level, where they both manufacture and sell propulsion systems for guided weapons (through their respective interests in Celerg, a joint venture with SNPE, and Bayern Chemie, a joint venture with Thomson-CSF), and warheads (respectively through SERAT on the one hand, and TDW and Thomson DASA Armament (“TDA”, a joint venture with Thomson-CSF) on the other hand). DASA also manufactures and sells missile seekers, while Aérospatiale-Matra produces thermal batteries and electronic components for guided weapons.
120. CASA has no activity in guided weapons, except for its participation in the Meteor consortium currently competing for the UK programme for a Beyond Visual Range Air to Air Missile (“BVRAAM”).

Relevant product markets

121. Competition for GW/GWS generally takes place at two levels, namely at prime contracting level for GW/GWS on the one hand, and at sub-contracting level for GW/GWS sub-systems and equipment. Accordingly, the relevant product markets should first be defined by differentiating between prime contracting markets and equipment markets.

Prime contractor level

122. In previous decisions¹¹, the Commission indicated that GW/GWS are generally classified according to functionality and product characteristics into the following categories: air-to-air, surface-to-air/land, surface-to-air/naval, air-to-surface, anti-ship

¹¹ See cases IV/M.945-Matra BAe Dynamics/DASA/LFK and IV/M.1198-British Aerospace plc./Saab AB

and anti-armour. The Commission also suggested that these categories can be further segmented into types, a list of which is attached as Appendix 1.

123. The parties submit that the interchangeability between the different categories is limited, but that, within a particular category, there may exist a degree of interchangeability between various product types, as for instance a medium range missile may be used for a shorter range mission.
124. It appears from the results of the Commission enquiry that, although there may obviously be some blurring of product boundaries, most product types constitute separate product markets. However, there might be an exception in air-to-air and surface-to-air missiles, where it has been indicated that products with a similar range might be used for both air-to-air and surface-to-air applications. Other third parties also suggested that surface-to-air missiles (and especially MSAM and LSAM) should be further segmented into Anti-Tactical Ballistic Missiles and other product types.
125. However, for the purpose of this case, it is not necessary to further delineate the relevant product markets for GW/GWS, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Equipment level

126. GW are composed of a number of sub-systems and equipment, including (passive infrared, passive laser, semi-active, or active) seekers, proximity fuses, inertial guidance, warhead, rocket motor/propulsion, thermal batteries, etc.
127. The parties submit that each sub-system constitutes a separate product market, because each sub-system is in itself a distinct technical unit. This has been broadly confirmed by the results of the Commission enquiry. In addition, according to some third parties, it might be necessary to make a distinction between the various types of seekers, and between rocket motors and other engines (such as gas turbines, ramjets, etc.).
128. However, for the purpose of this case, it is not necessary to further delineate the relevant product markets for GW/GWS equipment and sub-systems, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

129. In previous decisions¹², the Commission indicated that a distinction should be made between those countries where domestic suppliers exist, and where military customers wish to support those national suppliers and thereby the country's military independence; and those countries where there is no domestic supplier, and where, subject to export restrictions and other barriers connected with national security, competition generally takes place worldwide amongst suppliers of different countries. The Commission concluded that markets remain national where a domestic supplier exist, and are worldwide otherwise. In these decisions, the Commission recognised that markets for defence equipment had shown a move towards a more international approach to procurement, but concluded that this trend was still not sufficient to modify its approach.

¹² See cases IV/M.945-Matra BAe Dynamics/DASA/LFK and IV/M.1198-British Aerospace plc./Saab AB

Prime contractor level

130. Depending on the identity of customers, GW/GWS may be procured either through national or multinational programmes, or through export contracts on the international market. In the case of programmes, military customers have the industry develop and produce new products tailor-made to the specific requirements expressed by the customers; in exchange, customers have to fully or partially fund the design, development and industrialisation of these products; furthermore, due to the extensive work required for these activities, a substantial period of time often elapses between the moment when the specifications are defined and the actual delivery of the product concerned. By contrast, customers procuring military products through export contracts purchase available products or designs (usually resulting from previous programmes), although customers may obviously require certain that certain adjustments be made to these products. It follows that export customers usually cannot obtain tailor-made products but instead have to choose between existing solutions; on the other hand, deliveries can be quicker than in the case of programmes, and customers do not have to directly fund design and development works.
131. Accordingly, there appears to be substantial differences between these two types of procurement. Furthermore, insofar as programmes may be indispensable for the industry to develop and produce new products, they are also an essential tool in order for military customers to maintain or develop industrial capabilities and thereby military independence (either at national level or at multinational level). Programmes and export contracts will therefore usually concern different types of customers, since military customers wishing to preserve certain industrial capabilities will preferably resort to programmes, while other customers will generally source their military products on the international export market. It may also happen that, depending on the existence of available products or on the experience of domestic prime contractors, the same military customer will procure certain products through programmes, and other products through export contracts. For instance, in air-to-surface GW/GWS, the French, German and UK MODs has procured SOW through programmes, but have purchased existing LGB from USA-based suppliers.
132. Furthermore, the conditions of competition between programmes and export contracts appear to be different. A first difference is that, in export contracts, competition is between suppliers with existing products (each with specific performance, costs, conditions of use, etc.) which they will generally not be able to substantially alter; by contrast, in the case of programmes, suppliers do not need to have an existing product, but have to demonstrate their capability to design, develop and manufacture a product meeting the customer's specific requirements. The identity and the competitive position of prime contractors may therefore be different in programmes and in export contracts. A second difference is that, in programmes, there may be important geographic restrictions as to the origin of the potential suppliers concerned, especially in those countries where military customers wish to support national suppliers.
133. In the light of the above, it appears that, for each product market, a distinction should be made between those Member States which procure GW/GWS through programmes (and which were identified, in previous decisions, as national markets), and those Member States which procure military products on the international export market.
134. The results of the Commission enquiry confirm the trend towards an increased use of international competition. This may enlarge the scope of suppliers able to compete in those Member States procuring defence products through programmes. However, at

this stage, this does not seem to eliminate the difference between those Member States procuring through programmes and those Member States sourcing on the international export market; and, despite indications by the French and German MODs that they now source GW/GWS through international competition, recent and forthcoming examples suggest that this trend might still not be sufficient to modify the traditional approach followed by the Commission. In this context, the impact of the operation would have to be measured in particular in France, Germany, as well as in the rest of the world.

135. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic markets for GW/GWS, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Equipment level

136. The parties submit that the geographic dimension of the markets for GW/GWS sub-systems and equipment traditionally reflected the dimension of the downstream GW/GWS markets, but that national markets have now been opened and that suppliers now have to develop their customer base beyond domestic territories. The parties consider that, therefore, the geographic markets for sub-systems and equipment are European-wide, and may even be wider for less sensitive components for which price considerations prevail in procurement decisions.

137. It appears that the dimension of the geographic markets for GW/GWS equipment and sub-systems procured in the context of export contracts is usually the same as for the downstream GW/GWS concerned, and that these markets are therefore worldwide.

138. In the case of programmes, the results of the Commission enquiry suggest that the markets for GW/GWS sub-systems and equipment are increasingly open to non-domestic suppliers. However, they also suggest that, for critical GW/GWS sub-systems and equipment such as seekers, programme customers usually still procure from domestic suppliers; and, even for non-critical sub-systems and equipment (such as propulsion, warheads, etc.), it appears that there may be restrictions as to the origin of certain suppliers in the case of multinational programmes where a geographic “fair return” rule applies, and that prime contractors usually have a preference for national suppliers with which they are used to working and which are subject to the same export rules. Accordingly, at this stage, the results of the Commission enquiry still point in favour of national markets for GW/GWS equipment and subsystems procured in the context of programmes.

139. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic markets for GW/GWS sub-systems and equipment, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competition assessment

140. Aérospatiale-Matra is active at the prime contractor level in three ways. First, it has its own missile branch, named Aérospatiale-Matra Missiles (“AMM”); secondly, Aérospatiale-Matra has joint control¹³ of Matra BAe Dynamics (“MBD”), a 50/50 joint

¹³ See case IV/M.820 - British Aerospace/Lagardère

venture with BAe Systems; and thirdly, Aérospatiale-Matra indirectly has influence over Lenkflugkörpersysteme GmbH (“LFK”), a joint venture¹⁴ between MBD (30% of shares) and DASA (70% of shares). DASA is also active at the prime contractor level, both through its own missile division and through its joint controlling interest in LFK.

141. The parties submit that, since LFK is already controlled by MBD and DASA, the only change resulting from the creation of EADS will be the contribution of DASA’s and CASA’s individual activities. However, this argument has to be dismissed on the basis that the operation will give the former Aérospatiale-Matra additional rights in LFK, and will increase the possibility of AMM’ and MBD’s interests to influence strategic decisions relative to LFK. Prior to the transaction, the possibility for AMM’ and MBD’s interests to be taken into account for the adoption of LFK’s strategic decisions were limited by the fact that, pursuant to the Shareholders Agreement between MBD and DASA relative to LFK, DASA could take alone a number of decisions concerning LFK : [...]; by contrast, after the proposed concentration, the situation will be substantially different, in that EADS will inherit both DASA’s rights over LFK and Aérospatiale-Matra’s interests in AMM and MBD.
142. In the light of the above, it is necessary to assess, not only the contribution of DASA’s and CASA’s individual activities to Aérospatiale-Matra GW/GWS business, but also the competition effects arising from the change in the control at LFK. On the other hand, the operation will obviously not affect the quality or nature of control of MBD, which will remain jointly controlled albeit by EADS and BAe Systems (rather than Aérospatiale-Matra and BAe Systems).
143. The parties also submit that there are no affected markets at the equipment level, because the parties’ activities in sub-systems were already linked through their joint control in LFK. However, this argument has to be dismissed on the basis that the operation will combine Aérospatiale-Matra and DASA’s previously fully-separated equipment businesses.

Programmes

Prime contractor level

144. DASA, Aérospatiale-Matra, MBD and LFK participate in a number of programmes in for GW/GWS. In particular, their activities overlap in surface to air (both land and naval), air to surface, anti-ship and anti-armour applications.
145. It appears that, in programmes, competition takes place at specific times within the procurement process (essentially at the beginning of the development phase, and possibly at the beginning of the production phase). In the foreseeable future, new contracts will arise from the initiation of new phases (such as production) for existing programmes, and the launch of new programmes. It is therefore necessary to examine the impact of the transaction on these possible forthcoming events.
146. DASA, LFK, AMM and MBD may participate in or compete for the same programmes within the foreseeable future, for each of MRAAM, VSHORAD/SHORAD, LGB, SRAT, MRAT and LRAT. However, first, in most cases, the parties are part of the same teams (like in MRAAM for the UK BVRAAM programme, or in MRAT or LRAT for the Trifom and Trigat programmes). And secondly, programme markets are

¹⁴ See case IV/M.945- Matra BAe Dynamics/DASA/LFK

bidding markets, where the conditions of competition are determined by the presence of competitors with the capability to offer credible alternatives to the parties products. In that context, it is important to note that, for each programme concerned where a competition is organised, the parties will remain subject to the competition from other large prime contractors such as Raytheon, Lockheed-Martin, Thomson-CSF or Alenia Marconi Systems. Furthermore, insofar as the merged entity will have substantially different stakes in AMM, LFK and MBD, and as LFK and MBD will also be jointly controlled by another company (namely BAe Systems) with potentially different incentives, it is possible that some of the joint ventures still compete with each other after the present transaction.

147. DASA, LFK, AMM and MBD may also participate in or compete for different programmes within the same product type in the foreseeable future. For instance, in SOW, MBD is currently developing a product called Scalp/Storm Shadow for France and the UK, while LFK participates in the development of Taurus, another programme launched in 1998 in Germany. Similarly, in VSHORAD, MBD is expected to be the prime contractor in an upgrade programme for its current Mistral product, while LFK has a production and export licence for Stinger, another product from Raytheon.
148. The operation will not create direct overlaps, in that the parties' activities will concern different programmes sold to different programme customers. However, in those cases where the parties may participate in several programmes within the same product type, or where one party may participate in a programme for a product type where the other currently offers competing products, the operation might change the competitive equilibrium between the parties on the one hand, and their programme customers on the other hand: there will no longer be several prime contractors having each one single programme, but instead one group having several programmes within the same product type and facing several programme customers. It is therefore necessary to assess whether the notified concentration might change the parties' incentives to participate in all programmes, and give them the capability to raise prices or impose unacceptable conditions for the programmes where they are expected to be involved.
149. However, there is no indication that this risk could materialise in the present case. For most product types concerned, the operation does not appear to affect the incentives of the parties to participate in the programmes concerned, either because DASA and LFK's activities are not expected to generate export revenues [...] or because Aérospatiale-Matra and DASA's products are not considered to actually compete with each other (because of differences in performance, conditions of use, platforms, targets, etc.). Furthermore, in most programmes under development, the parties' capability to raise prices or impose unacceptable contractual conditions is seriously limited by the fact that the contractual conditions for later stages are either already defined or subject to price ceilings.
150. Finally, the Commission maintains that when assessing market power of firms in the defence industry, account must be taken of the bargaining power of its main clients: the Ministries of Defence of the states concerned. MODs generally formulate the operational requirements and technical specifications of armament. MODs' general opinions must therefore be taken in consideration when assessing the operation. In this respect, it should be noted that the MODs of the Member States concerned have been consulted by the Commission, and have not shown a negative attitude towards the proposed concentration.

Equipment level

151. The operation will create horizontal overlaps in rocket motors, where Aérospatiale-Matra and DASA operate through joint ventures : Aérospatiale-Matra has a 50% stake in Celerg (a joint venture with SNPE), while DASA has a 50% interest in Bayern Chemie, a joint venture with Thomson-CSF. Furthermore, the operation will also lead to a vertical integration between the parties' activities at the prime contractor level, and their supply activities for certain equipment (rocket motors, seekers, warheads, thermal batteries, electronic components). It is therefore necessary to examine whether the operation could lead to a foreclosure of third party equipment suppliers (if AMM, MBD and LFK favoured suppliers partially owned by EADS), and whether the operation could also lead to a vertical foreclosure of third party prime contractors (if the parties' equipment subsidiaries did not offer competitive prices to these prime contractors).
152. However, it appears from the Commission investigation that third party GW/GWS prime contractors currently do not primarily source from the parties, and that they can find credible alternative sources of supply in the EEA for all of the products concerned. There is therefore no indication that the parties could vertically foreclose third party prime contractors, unless they weaken the competitive position of third party equipment suppliers. It follows that the competition assessment ultimately depends on the parties' capacity to foreclose the equipment markets to third party suppliers. And, in any event, the interest of MBD to favour EADS suppliers would be weaker than for EADS itself.
153. Furthermore, it appears unlikely that the parties could weaken the competitive position of third party suppliers by unduly favouring in-house suppliers. In particular, it appears that MODs are able to maintain or develop the competitiveness of equipment suppliers through their R&D funding activities, which both seriously restricts the parties' capacity to favour in-house suppliers, and would in any event limit the adverse effects of (and therefore the parties' incentives to engage in) such a behaviour.
154. Finally, the Commission maintains that when assessing market power of firms in the defence industry, account must be taken of the bargaining power of its main clients: the Ministries of Defence ("MODs") of the states concerned. MODs generally formulate the operational requirements and technical specifications of armament. MODs' general opinions must therefore be taken in consideration when assessing the operation. In this respect it should be noted that the MODs of the Member States concerned have not shown a negative attitude towards the proposed concentration.

Export contracts

155. The operation will create horizontal overlaps in a number of product types, where the parties currently have, or are anticipated to have, products available for offer to export customers in the foreseeable future. However, export markets are bidding markets, where the conditions of competition are determined by the presence of competitors with the capability to offer credible alternatives to the parties products, and, for each market concerned, the parties will remain subject to the competition from other large prime contractors such as Raytheon, Lockheed-Martin, or Thomson-CSF.
156. In the light of the above, it appears that the notified operation does not create or strengthen a dominant position in GW/GWS and their related equipment, as a result of

which effective competition would be significantly impeded in the EEA or any substantial part of that area.

F. DRONES

157. Both Aérospatiale-Matra and DASA are prime contractors of drones. Drones are unmanned air vehicles which are either remotely or automatically controlled, and which may be used by military operators for four types of mission : observation, communication (relays and scrambling), monitoring (electronic and communication intelligence), and combat.

Relevant product markets

158. The parties submit that drones may be classified according to their mission (i.e. observation, communication, monitoring, and combat). They also submit that drones may be categorised in tactical drones (maximum range of 150 km, flying capacity below 10 h, and low-altitude flight profile) and long endurance drones (range up to 5000 km, flying capacity over 24 hours, and medium to high altitude flight profile). However, the parties submit that only the tactical observation drone segment is currently a commercial reality, because the other segments are still in development.
159. Drones are usually used in the context of systems comprising a ground installation and the associated vectors. However, the parties submit that the whole system is usually manufactured by the prime contractor, which might make it unnecessary to isolate separate product markets for the various components.
160. However, for the purpose of this case, it is not necessary to further delineate the relevant product markets for drones, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

161. Drones are currently only used for military purposes, and are therefore procured in the same conditions as other defence products. However, in the case of drones, the parties submit that the geographic markets are now at least EEA-wide, because European customers increasingly organise competitive bidding procedures open to non-national suppliers, and actually procure drones from non-national (even non-European) suppliers.
162. The results of the Commission enquiry confirm the trend towards an increased use of international competition. This may enlarge the scope of suppliers able to compete in those Member States procuring defence products through programmes. However, as indicated in the case of guided weapons, this trend does not seem to eliminate the difference between those Member States procuring programmes and those Member States sourcing on the international export market; and, despite indications by the French and German MODs that they now source drones through international competition, recent examples suggest that this trend might still not be sufficient to modify the traditional approach followed by the Commission. In this context, the impact of the operation would have to be measured in particular in France, Germany, as well as in the rest of the world.

163. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic markets for drones, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competition assessment

Programmes

164. DASA, Aérospatiale-Matra and MBD participate in a number of programmes in France and Germany for observation drones. First, Aérospatiale-Matra and DASA have each maintenance services for the CL289, a tactical observation drone in service in the French and German armies. Secondly, MBD (as part of Eurodrone, a GIE with STN Atlas) and DASA have each development activities for tactical observation drones in Germany, respectively the Brevel (to be produced as of 2000) and SEAMOS (expected to be developed as of 2001). Finally, MBD also has a cooperation with IAI for the development of a long endurance drone, the operational needs of which might be determined in 2002.
165. In programmes, competition takes place at specific times within the procurement process (essentially at the beginning of the development phase, and possibly at the beginning of the production phase). In the foreseeable future, new contracts will arise from the initiation of new phases (such as production) for existing programmes, and the launch of new programmes. It is therefore necessary to examine the impact of the transaction on these possible forthcoming events.
166. In Germany, four drone programmes are currently considered : the Brevel programme (led by the Eurodrone GIE between MBD and STN Atlas, and expected to enter into production in 2000) and the SEAMOS programme (led by DASA, and expected to be developed as of 2001) concern tactical observation drones, while the Taiphun and the Mücke drones (both led by STN Atlas) concern attack and jamming drones.
167. There is no indication that the operation could affect the selection of prime contractors for these programmes, since the distribution of prime contractor responsibilities already appears to be defined. Nor is there any indication that the operation could change the parties' incentives to participate in the Brevel or SEAMOS programmes, since (i) the Brevel and SEAMOS programmes concern very different products (SEAMOS being a vertical take-off and landing drone intended for naval applications and using a radar sensor, and Brevel a fixed wing aircraft using an infrared sensor) which actually do not seem to compete with each other, and (ii) the parties' roles in these programmes are substantially different (DASA being the prime contractor for SEAMOS, and MBD only providing the ground station and a part of the datalink for Brevel).
168. Finally, new programmes appear to be expected for long endurance drones, especially in the UK, or possibly tactical observation drones in certain Member States. However, it appears that these programmes will be procured through international competition, and that other drone prime contractors (such as BAe Systems, Sagem, Meteor, or US-based AAI) have the capability to offer credible alternatives to the parties' products.
169. Furthermore, the Commission maintains that when assessing market power of firms in the defence industry, account must be taken of the bargaining power of its main clients: the Ministries of Defence of the states concerned. MODs generally formulate the operational requirements and technical specifications of armament. MODs' general

opinions must therefore be taken in consideration when assessing the operation. In this respect, it should be noted that the MODs of the Member States concerned have been consulted by the Commission, and have not shown a negative attitude towards the proposed concentration.

International markets

170. Aérospatiale-Matra and DASA's only existing product is the CL289, which has not been sold outside of France and Germany. Furthermore, although the Brevel might be offered to export customers in the future, it will face the competition of other tactical observation drones, such as Phoenix (BAe Systems), Mirach 26 (Meteor), Sperwer/Crécerelle (Sagem), Hunter/Ranger (IAI) and Shadow 200/600 (AAI).
171. In the light of the above, it appears that the notified operation does not create or strengthen a dominant position in drones as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

G. MILITARY AIRCRAFT

172. In military aircraft, the parties are primarily active in combat aircraft, where DASA and CASA participate in the Eurofighter programme with BAe Systems and Alenia, and where Aérospatiale Matra, through its controlling interest in Dassault Aviation, produces the Rafale and Mirage 2000 platforms. DASA is also a member of the Tornado programme (with BAe Systems and Alenia) which ceased production in 1998.
173. The Parties are also active in the special mission aircraft, and in particular in maritime patrol aircraft (MPA), where CASA, Aérospatiale-Matra (through its interests in the ATR *GIE*), and Dassault Aviation are active.
174. Finally, the parties provide maintenance, upgrade and logistical support (MUL) services. However, these are traditionally restricted to their own platforms, or to their respective national forces (closed market). The Parties are also active in the small part of the of the MUL market which is commercially open but no affected market has been identified.

Relevant product markets

Combat aircraft

175. The Parties have defined the market as comprising all multi-role combat aircraft which includes the following platforms currently in production: F-15 (Eagle), F/A-18 series C/D (Hornet), F/A-18 series E/F (Super Hornet), F-22, AV-8B/Harrier II, F-16 series C/D Block 50 and 60, F-2, Rafale, Mirage 2000-5/-9, Eurofighter/Typhoon, Gripen and the Russian platforms Sukhoi and MiG-MAPO. All these platforms (and those about to enter into production (e.g. Joint Strike Fighter, to be developed for the US DoD)) have multi-role capabilities which vary depending on the equipment and weapons attached.
176. Although there might seem to be little substitutability between a pure air-to-air platform and a pure air-to-ground platform in terms of capability to perform the required mission, contemporary fighters are precisely designed (or have been upgraded) to multi-role configuration to allow switching and thus substitutability between roles. Furthermore, although multi-role aircraft may come with different role, weight class and price bracket, the parties outline a series of reasons why customers would consider most products to compete with each other : (i) in the attempt to

compromise the post cold war defence budget restraints and the national defence requirements depending on the intensity of the geopolitical threat, MoDs consider a wide range of price options; and (ii) customers usually select combat aircraft after taking into consideration a number of factors, which may make apparently dissimilar products competitors to each other.

177. The results of the Commission's investigation generally support this proposed market definition. However, for the purpose of this decision, it is not necessary to further delineate the relevant product markets for combat aircraft, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Special mission aircraft

178. Indications based on the different requirements of MoDs and the differing nature of "special missions", suggest that the special mission aircraft market may be fragmented into various segments such as: (i) bombers; (ii) tankers (iii) command and control, i.e. airborne early warning (AEW) (iv) electronic warfare and (iv) maritime patrol (MPA). The latter may have one or more of the following designations: coastal patrol, search and rescue, maritime reconnaissance, anti-submarine warfare and anti-surface vessel warfare.
179. However, for the purposes of this decision, it is not necessary to further delineate the relevant product markets for special mission aircraft, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Geographic markets

180. As indicated in the case of guided weapons, it appears that a distinction should be made between those Member States procuring programmes and those Member States sourcing on the international export market. For the military aircraft markets concerned, it appears that the programme markets are national, and that the international export markets are global.
181. However, for the purposes of this decision, it is not necessary to further delineate the relevant geographic markets for military aircraft, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

Competition assessment

Combat aircraft

182. DASA and CASA are active in the Eurofighter multi-role aircraft programme, the manufacturing of which began in May 1998. After the transaction, EADS will have 46% of shares of the Eurofighter consortium, the other shareholders being BAe Systems (33%) and Alenia (21%). [...], each of EADS and BAe Systems will [...] have joint control over Eurofighter.
183. Aérospatiale-Matra is also active in multi-role aircraft via its controlling interests in Dassault Aviation, the prime contractor of the Rafale and Mirage 2000 programmes.

Programmes

184. The Eurofighter programme on the one hand, and the Rafale and Mirage 2000 programmes on the other hand, concern different products sold to different programme customers. Furthermore, the production contracts for all of these programmes have already been defined, so that the operation will not affect the selection of the prime and sub-contractors or the contractual conditions for these programmes.
185. However, in view of the fact that EADS will participate in both programmes, and given the apparent proximity between the products concerned, third parties have indicated that the operation might change the competitive equilibrium between the parties on the one hand, and their programme customers on the other hand. It is therefore necessary to assess whether the notified concentration might change the parties' incentives to participate in all programmes, and give them the capability to raise prices or impose unacceptable conditions for future developments or upgrades to the Eurofighter and the Rafale.
186. However, there is no indication that the operation could create a dominant position in the programme markets concerned. First, it appears unlikely that the merged entity would have substantial incentives to favour one product vis-à-vis the other: despite the similarities between the Eurofighter and the Rafale (so that these products actually appear to compete with each other), these products seem to have distinct competitive positions on the export markets, because customers appear to take their procurement decisions taking into a variety of criteria (relative to the armament integrated, to offset arrangements or to political considerations). It is even possible that the future developments or upgrades concerned could actually increase the degree of differentiation between both products.
187. Secondly, in any event, there is no indication that the parties would be in a position to raise prices or impose unacceptable conditions to their programme customers. It should be noted that EADS will only have joint controlling interests in Rafale and Eurofighter, and it is relatively unlikely that Dassault or BAe Systems would accept to see their competitive position weakened. And it should also be noted that the programme customers appear to have sufficient countervailing buying power to constrain the competitive behaviour of EADS, and in particular could use future contracts in other areas as a leverage to obtain reasonable conditions by the parties.

International markets

188. There is no indication that the operation could create a dominant position on the export markets, since the parties' products will remain subject to the competition from other multi-role aircraft, and in particular are not expected to account for more than 20% of sales of multi-role aircraft for the period 1999-2004.

Special mission aircraft

189. Among the Parties, CASA offers two military transport aircraft platforms with "maritime patrol" (MPA) special mission configuration (C 212 and CN 235). CASA assembles the special mission equipment kit but does not produce the relating parts. Aérospatiale-Matra, through its participation to the ATR GIE, offers the ATR platform also with MPA configuration, competing with the CN 235. Dassault's Falcon business jet can also be specified in a multi-role special mission version.

190. There appear to be future programmes in special mission aircraft, such as A400M- (tactical/strategic transport aircraft), ATL3-long-range, anti-submarine warfare MPA, and Mako (trainer/light attack). However, for all of these programmes, the parties will remain subject to the competition from other credible prime contractors. Furthermore, for the A400M and ATL3 programmes, it appears that the selection of the prime contractors is well under way, and that therefore the operation would not appear to substantially affect the conditions of competition for these programmes.
191. With respect to the international markets, and despite the difficulty to obtain accurate market data, it appears that the parties' market position is relatively minor, and that a variety of platforms other than those of the parties are available.

Integration of airborne GW/GWS

192. An affected vertical market has been identified with regard to the integration of GW and GWS (guided weapons/guided weapon systems) in military aircraft. The Commission examined the allegation that, in the context of programme markets especially, the Parties could favour the integration to Eurofighter of their products (e.g. ASRAAM) at the expenses of competitors' products (such as IRIS-T).
193. However, first, it is questionable that the parties would have incentives to engage in such a behaviour, since their interest is to equip their combat aircraft with as many armaments as possible so as to optimally satisfy export customers. Furthermore, it appears that the operation does not fundamentally affect any conflict of interest between the aircraft and the GW/GWS level, since, before the operation, DASA, BAe Systems and Aérospatiale-Matra already had interests at both levels. And finally, in any event, it appears that programme customers have sufficient countervailing buying power to constrain the competitive behaviour of the parties.
194. In the light of the above, the proposed transaction does not create or strengthen a dominant position in military aircraft as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

H. DEFENCE ELECTRONICS

195. AM and DASA are both active in the area of defence electronics, where they primarily supply military command, information and communication systems (including command and control systems, telecommunication systems and image processing systems). AM is active in the defense electronics sector through its subsidiaries Systèmes Services and Telecoms ("SST") and Matra Systèmes & Information ("MS&I"). DASA has activities in this sector through its Defense and Civil Systems Division, including its subsidiary Dornier GmbH. CASA is not active in this sector.
196. AM is also active in related maintenance and logistics systems in France. DASA has a minority share holding interest (30%) in ESG Elektroniksystem und Logistik GmbH ("ESG"), which is a German joint venture company that develops and integrates software for defense electronic systems. By virtue of a shareholders agreement between DASA and the other main shareholders, DASA has joint control of ESG. [...]. Debis, a sister company of DASA, also provides defence electronics software services, though mostly as a subcontractor to DASA.

Relevant product markets

197. The parties propose a division of defence electronic systems into two main categories: (i) operational systems and (ii) organisational support systems permitting the preparation and maintenance of operational systems in optimal service. Operational systems can further be divided into (i) command, information and communication systems and (ii) global systems.
198. According to the parties, command, information and communication systems can be segmented into the following product markets: (i) Military Command, Control, Communication and Information systems (“C3I”); (ii) Military Command and Control systems (“C2”); (iii) secure telecommunications systems and (iv) photointerpretation and imaging processing systems (“IPS”).
199. The parties submit that C3I systems are computerised systems shared between fixed military infrastructure and tactical systems of the armed forces, that allow operationals at all levels to establish at a given time the situation of different forces, their means, the orders in force, and to plan, order and supervise the appropriate action. C2 systems correspond to those systems, which provide real time management of sensors, weapons or weapon systems.
200. At present, C3I, C2 and secure telecommunication systems are primarily developed and produced for military purposes. Only IPS systems have significant civilian applications though, according to the parties, developments are taken place in the civil application of C3I by the French producer Alcatel. The notifying parties take the view that there is no need to further distinguish the applications of C3I and C2 for air, ground and naval forces and to those applications, which may jointly be used by these forces. The hardware and software equipment is similar for each application, all systems are procured by the same customer (typically the respective Ministry of Defense), and it appears that manufacturers are generally able to supply C3I for the different applications. The parties acknowledge that as far as C2 systems are concerned, there is a wider variety of C2 systems depending on the specific armament system considered within ground, naval or airborne applications though all C2 systems comprise similar technologies. The information obtained during the market investigation generally supports the view that no further delineation of the product market is necessary to assess the impact of the present operation.
201. The parties submit that IPS comprises activities at two different levels (the infrastructure and application level) and that it has both civil and military applications. IPS systems cover the following products: ground segment for sensors (i.e. satellite, aeroplane or UAV), geographic information systems (i.e. software used for certain applications such as environment, cartography, geology, etc.), image reconnaissance systems (e.g. control of ground or production, automatic counting, character recognition, etc.), military photointerpretation and satellite imaging stations (i.e. complete processing stations). The third parties contacted during the market investigation are of the opinion that all the above categories, apart from geographic information systems (“GIS”), can be included into a broader product market.
202. As to the telecommunications systems, it is put forward that the telecommunications systems and secure radio communications systems used by armed forces can be divided into mobile systems (carried by troops), transportable systems (carried by military vehicles) and fixed systems. The market investigation generally supports the view that these markets constitute separate product markets.

203. The second main category of defence electronic systems, proposed by the notifying parties, comprises the organisational support systems, i.e. maintenance services and logistical systems. According to the parties, the reason for the emergence of this market is the growing desire of the armed forces to outsource for cost reasons the maintenance of the aircraft equipment on air bases, including possibly the management of spare parts. Logistical systems are designed to organise the management of the replacement parts and logistical flow for the armed forces. At present DASA has no activities in this sector and thus there is no overlap between the activities of the parties.

Relevant geographic markets

204. The parties view the markets for operational systems including C31, C2 and military communications equipment to be of a national scope. The Commission has in a number of cases¹⁵ concerning defence products and services come to the conclusion that the respective markets tend to remain national where a domestic supplier exists, notwithstanding a certain movement towards a wider European market resulting from common defense programmes and alliances. The market investigation appears to generally support this finding in respect of defence electronic systems.

205. As far as the IPS sector is concerned, a distinction can be made between civil and military applications. The military IPS sector is traditionally of a national scope where there is a national supplier, though the notifying parties also acknowledge that the market is expanding to Europe and beyond due to the development of civil technologies allowing companies active in the commercial area to develop products that can also satisfy the requirements of military customers. The relevant geographic market concerning AM's civil activities in the IPS is considered to be world-wide.

Competition assessment

206. In view of the fact that the notifying parties mostly sell their military applications to their respective national MODs, and that only AM has significant activities in the IPS sector, the operation therefore does not appear to create any horizontal overlaps between the activities of the parties. Furthermore, at a wider level, the parties appear to remain subject to the competition by other large defence electronics suppliers, like BAe Systems and Thomson-CSF in Europe, or Lockheed-Martin and Raytheon world-wide. Consequently, the operation does not appear to create competition concerns in this sector.

207. In the light of the above, it can be concluded that the notified operation does not create or strengthen a dominant position in the different markets in the defence electronic sector as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. COMMITMENTS SUBMITTED BY THE PARTIES

208. When the competition concerns relative to the parties' market positions in antenna reflectors and central tubes for satellites were communicated to the parties, the parties offered (on 13.04.2000) certain commitments to remove the competition concerns which the Commission had identified. On 03 May 2000, the parties submitted amended commitments taking into account certain adjustments required by the Commission in

¹⁵ See IV/M.527 Thomson CSF/Deutsche Aerospace, IV/M.620 Thomson CSF/Teneo/Indra, IV/M.767 Thomson CSF/Finmeccanica/Elettronica.

view of, in particular, the results of the market test. The full text of the commitments is annexed to this Decision.

209. These commitments consist in AML's divestment of two packages enabling their purchaser(s) to independently and viably to design, manufacture and sell antenna reflectors and central tubes for satellites. These divestment packages comprise intellectual property rights, and, at the purchaser's option, the transfer of employees or the provision of technical assistance, and dedicated tools. In the case of central tubes, the parties will also transfer their supply contract with Alcatel Space, and, in the case of antenna reflectors, the parties will [...].
210. This remedy will permit the creation of an credible alternative source of supply for the products concerned, and will avoid the possible adverse effects of the transaction. Consequently, this undertaking, if implemented, will remove the Commission's concerns that the proposed concentration would create a dominant position in antenna reflectors, central tubes and military communication satellites.

VI. ANCILLARY RESTRAINTS

211. DaimlerChrysler, Topco, Sogepa, SEPI and Lagardère have agreed not to disclose confidential information in relation to other parties' clients, businesses or affairs, or in relation to the terms of the transaction documents. DaimlerChrysler, Lagardère and Aérospatiale-Matra have agreed not to disclose information relative to other agreements relative to the transaction.
212. These confidentiality clauses prevent the parties from undermining the value of the business transferred by starting to (or enabling other undertakings to) compete with it through access to sensitive information. However, certain of these confidentiality clauses survive the termination of the operation agreements by [0-5] years. This appears to exceed what is directly related and necessary for the present transaction, and the confidentiality agreements will therefore be covered by the present decision for the duration of the joint venture only.
213. DaimlerChrysler and Lagardère have also agreed not to compete with EADS, either alone or jointly. This restriction protects EADS from free-riding by the parent companies. However, first the scope of this clause appears to exceed what is directly related and necessary for the implementation of the notified transaction : this non-competition clause will also apply to the acquisition of non-controlling interests in competitors to EADS, and therefore to situations where DaimlerChrysler and Lagardère will not be in a position to influence the strategic decisions of these competitors. Furthermore, the duration of this non-competition agreement appears to exceed what is directly related and necessary to the implementation of the notified concentration, since it will remain valid after DaimlerChrysler and Lagardère have ceased to have controlling interests in EADS, and therefore in cases where these companies will not have any opportunity to exercise a decisive influence over EADS.
214. This non-competition agreement is directly related and necessary to the implementation of the notified concentration and therefore covered by this decision only to the extent that DaimlerChrysler and Lagardère have a controlling interest in EADS. The present decision also does not cover the prohibition to acquire non-controlling participations in competitors to EADS.
215. Finally, the parties have entered into agreements for certain rights of first offer or put options relative to their shares in EADS. However, first, these agreements do not

appear to concern restrictions of competition, since they do not limit the parties' own freedom of action in the market; and secondly, they appear to be integral parts of the concentration itself. Accordingly, these agreements do not fall into the category of ancillary restrictions.

VII. CONCLUSION

216. On condition that the commitments summarised above and laid out in detail in the Annex are fully complied with, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

APPENDIX 1

GUIDED WEAPONS – CATEGORIES AND TYPES

CATEGORY	TYPE
<i>GW – Air to Air</i>	<ul style="list-style-type: none"> * Short Range (SRAAM) * Medium Range (MRAAM) * Long Range (LRAAM)
<i>GW – Surface to Air – Land</i>	<ul style="list-style-type: none"> * Very Short Range Air Defence (VSHORAD) * Short Range Air Defence (SHORAD) * Medium Range Surface to Air (MSAM) * Long Range Surface to Air (LSAM)
<i>GW – Surface to Air – Naval</i>	<ul style="list-style-type: none"> * Point Defence (PDMS) * Area Defence (ADMS)
<i>GW – Air to Surface</i>	<ul style="list-style-type: none"> * Laser Guided Bomb (LGB) * Short Range Missile (SRM) * Stand-Off Weapon (SOW) * Anti-Radiation (ARM)
<i>GW – Anti-Ship</i>	<ul style="list-style-type: none"> * Light Short Range (AshM-L) * Heavy Long Range (AshM-H) * Anti-Submarine
<i>GW – Anti Tank</i>	<ul style="list-style-type: none"> * Short Range (SRAT) * Medium Range (MRAT) * Long Range (LRAT) * Terminal Guided Mortar (TGMB)

APPENDIX 2

COMMITMENTS PROPOSED BY THE PARTIES

CASE COMP/M.1745 – EADS

UNDERTAKING

Subject to the following provisos and without prejudice to their rights and obligations under applicable laws and regulations, Aerospatiale Matra (“AM”), DaimlerChrysler AG (“DC”) and Sociedad Estatal de Participaciones Industriales (“SEPI”) (collectively, the “Parties”) give the following undertaking pursuant to Article 6.2 of Council Regulation 4064/89 (the “Undertaking”) in respect of the EADS transaction notified to the Commission on March 22, 2000 (“the Transaction”).

The Undertaking shall become effective upon receipt of the Commission’s decision approving the Transaction under Article 6.2 of Council Regulation 4064/89 (the “Effective Date”).

A. REFLECTORS FOR COMMUNICATIONS SATELLITES

1. The Parties undertake to divest to a suitable purchaser (the “Purchaser”) with capabilities in the area of composite space structures, in accordance with the procedure set out in Annexes 1 and 2, a package enabling the Purchaser independently and viably to design, manufacture and sell thick walls reflectors, stiffened shell reflectors, C-Band and Ku-Band dual-gridded reflectors and ultra-light reflectors for communications satellites currently manufactured by Aerospatiale Matra Lanceurs (“AML”) for Alcatel (the “Reflectors Divestiture Package”).
2. The Reflectors Divestiture Package shall consist of:
 - (i) a non-exclusive arms’ length licence, on a reasonable royalty-bearing basis, under all relevant intellectual property rights, including technology, know-how, manufacturing processes, tool specifications, procedures and relevant patents and documentation;
 - (ii) at the option of the Purchaser, the transfer of a sufficient number of AML employees wholly or substantially active in the design or manufacture of thick walls reflectors, stiffened shell reflectors, C-Band and Ku-Band dual-gridded reflectors and ultra-light reflectors for communications satellites currently manufactured by AML for Alcatel, or, on a reasonable cost-plus basis, all the technical assistance reasonably necessary for the purpose of enabling the Purchaser to manufacture independently from the Parties the relevant product with its own personnel; and
 - (iii) dedicated tools, and, to the extent the Purchaser is the same as the one mentioned in paragraph 5 and the option provided under paragraph 5.2 hereunder is exercised, the autoclave described in Annex 3.
3. [...].
4. With respect to paragraph 2(ii) above, the Parties undertake to use their best efforts to transfer to the Purchaser a sufficient number of employees wholly or substantially active in the design or manufacture of thick walls reflectors, stiffened shell reflectors, C-Band and Ku-Band dual-gridded reflectors and ultra-light reflectors for communications satellites currently manufactured by AML for Alcatel, subject to their agreement and

always subject to all applicable laws and regulations. To the extent necessary, and always subject to all applicable laws and regulations, the Parties shall agree with the Purchaser appropriate terms and conditions in order to facilitate the transfer of relevant employees, including appropriate incentive schemes (such as the continued right to all accrued benefits - or similar benefits to be offered by the Purchaser - *e.g.*, bonuses and pensions to which the employees are entitled) to persuade such employees to transfer to the Purchaser..

B. CENTRAL TUBES FOR COMMUNICATIONS SATELLITES

5. As a complement to the Reflectors Divestiture Package or separately, the Parties undertake to divest to a suitable purchaser (the “Purchaser”) with capabilities in the area of composite space structures a package, in accordance with the procedure set out in Annexes 1 and 2, enabling the Purchaser independently and viably to design, manufacture and sell central tubes manufactured by AML for the current Spacebus platform (the “Central Tubes Package”). The Central Tubes Package shall consist of:
 - 5.1(i) a non-exclusive arms’ length licence, on a reasonable royalty-bearing basis, under all relevant intellectual property rights, including technology, know-how, manufacturing processes, tool specifications, procedures and relevant patents and documentation;
 - (ii) at the option of the Purchaser, the transfer of a sufficient number of AML employees wholly or substantially active in the design or manufacture of central tubes manufactured by AML for the current Spacebus platform, or, on a reasonable cost-plus basis, all the technical assistance reasonably necessary for the purpose of enabling the Purchaser to manufacture independently from the Parties the relevant product with its own personnel; and
 - (iii) to the extent the Purchaser is not Alcatel, and subject to Alcatel’s approval, the existing commercial supply contracts relating to AML’s Spacebus dedicated central tube activity or any rights acquired by AML with respect to the supply of such Spacebus central tubes.
- 5.2 and, one option to acquire at fair market value (ex-works) one autoclave presently located at AML’s site in Les Mureaux, as described in Annex 3, as well as other dedicated tools.
6. With respect to paragraph 5.1(ii) above, the Parties undertake to use their best efforts to transfer to the Purchaser a sufficient number of employees wholly or substantially active in the design or manufacture of central tubes for the Spacebus platform currently manufactured by AML, subject to their agreement and always subject to all applicable laws and regulations. To the extent necessary, and always subject to all applicable laws and regulations, the Parties shall agree with the Purchaser appropriate terms and conditions in order to facilitate the transfer of relevant employees, including appropriate incentive schemes (such as the continued right to all accrued benefits - or similar benefits to be offered by the Purchaser - *e.g.*, bonuses and pensions to which the employees are entitled) to persuade such employees to transfer to the Purchaser.

ANNEX 1

DIVESTITURE PROCEDURE

The Parties undertake to divest the Reflectors Divestiture Package and the Central Tubes Package (the “Divestiture Packages”) in accordance with the following procedure:

1. The Parties shall reach a binding agreement concerning each Divestiture Package within [...] following the Effective Date (period 1).
2. To assist the Commission in determining whether any proposed Purchaser is suitable, the Parties shall submit a fully documented and reasoned proposal enabling the Commission to verify that (i) the Parties do not own a material interest (whether direct or indirect) in the Purchaser; (ii) the Divestiture Package allows the Purchaser to operate as a viable competitive force on the market; and (iii) the Divestiture Package is appropriate and sufficient to enable the Purchaser to successfully and independently manufacture the relevant product.
3. The Parties shall obtain the Commission’s prior approval to the relevant final draft agreement with the Purchaser, such approval not to be unreasonably withheld. The request for approval shall be made at the same time as the request for approval of the Purchaser.
4. Within fifteen (15) days from the Effective Date, the Parties shall nominate an independent and experienced trustee to be approved by the Commission (the “Trustee”) to oversee and monitor the Parties’ compliance with the Undertaking during period 1.
5. If a Purchaser for the Divestiture Packages has not been approved by the Commission within [...] from the Effective Date, the Parties shall grant to the Trustee an irrevocable mandate for implementing the Divestiture Packages at the best conditions available within a period of [...] from the end of period 1 (period 2).
6. As soon as is practically possible after it has been appointed, the Parties shall procure that the Trustee shall obtain the Commission’s prior approval of a list of potential Purchasers after preliminary discussions with the Parties. The Parties shall procure that the Trustee will keep the Commission regularly apprised of any on-going discussions with potential Purchasers.
7. The appointment of the Trustee shall be made in accordance with the procedure set out in Annex 2.

ANNEX 2

GENERAL PROVISIONS

1. The Parties shall propose to the Commission the name of an independent and experienced institution that they consider appropriate to be appointed as trustee (the “Trustee”). Such proposal shall be made within fifteen (15) working days after the date on which the obligation to appoint a Trustee enters into force. The Commission shall have the discretion to approve or reject the proposed institution in accordance with paragraph 10 below. If the proposed institution is rejected, the Parties shall submit the names of at least two further institutions, within five (5) working days of being informed of the rejection. If more than one name is approved by the Commission, the Parties shall be free to choose the Trustee to be appointed from among the names approved. If all further names are rejected by the Commission, the Commission shall nominate a Trustee to be appointed by the Parties.
2. The Trustee shall be appointed within five (5) working days after the Commission’s explicit approval or its implicit approval, in accordance with paragraphs 1, 8 and 10 hereof.
3. Along with their request for the Commission’s approval of a proposed Trustee, the Parties shall submit a proposed draft mandate setting forth in detail the scope of the mandate (including an incentive on the Trustee to use its best efforts in arranging a prompt value-maximizing transaction) and the responsibilities to be performed by the institution under the mandate. At the Commission’s reasonable request, the Parties shall modify the proposed mandate, in order to ensure that it is in accordance with the provisions of this Undertaking. Once the mandate has been executed, the Parties shall not be entitled to make any changes to such mandate without the Commission’s prior approval.
4. The Trustee’s mandate shall include the following responsibilities:
 - (i) to monitor the satisfactory discharge by the Parties of the obligations entered into in this Undertaking (in so far as they fall within the scope of the Trustee’s mandate);
 - (ii) to provide written reports to the Commission on the progress of the discharge of its mandate, identifying any respects in which the Trustee has been unable to discharge its mandate. Such reports shall be provided in English within ten (10) working days from the end of every two (2) month period following the Trustee’s appointment or at such other time(s) or time periods as the Commission may specify, and which shall cover the developments of the previous two-month period. The Parties shall receive simultaneously a non-confidential copy of such Trustee reports; and
 - (iii) at any time, to provide to the Commission, at its request, a written or oral report on matters falling within the Trustee’s mandate. The Parties shall receive simultaneously a non-confidential copy of such additional written reports and shall be informed promptly of the non-confidential content of any oral reports.

5. If this Undertaking requires the mandate of a Trustee to include the responsibility to conduct negotiations, and propose a purchaser, the Trustee shall:
 - (i) notify the Commission as soon as practically possible concerning the identity of potential Purchasers after prior discussions with the Parties and advise the Commission why it believes such Purchasers are suitable, in view of the criteria specified above;
 - (ii) end negotiations with any prospective purchaser, if the Commission determines that the negotiations are being conducted with an unsuitable purchaser; and
 - (iii) carry out the negotiations with the view to concluding a binding agreement (subject to the closing of the Transaction) that takes into account the financial interest of the Parties (*i.e.*, to obtain the best price and terms possible within the context of the Trustee's mandate).
6. The Parties shall provide the Trustee with all such assistance and information, including copies of all relevant documents, as the Trustee may reasonably require in carrying out its mandate; subject to any security restrictions, the Trustee shall have full and complete access to AML's personnel, books, records, documents, facilities and technical information relating to the manufacture of the relevant products, or to any other relevant information, as the Trustee may reasonably request, subject always to such access being limited to the scope of the Trustee's mandate.
7. As soon as the specific remedy with which the Trustee has been entrusted has been implemented, the Trustee's mandate in respect of that specific remedy shall be terminated subject to the prior approval of the Commission. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedy might not have been fully and properly implemented.
8. If the Commission has not within fifteen (15) working days following receipt of a fully documented and reasoned request rejected in writing any proposal submitted to it for approval pursuant this Undertaking, the proposal shall be deemed to be approved.
9. In the event exceptional circumstances arise that make the compliance with the timetable provided herein impossible or very difficult, and the Parties provide to the Commission reasonable evidence of such exceptional circumstances, the time periods set forth in Annex 1 for the implementation of the Undertaking may be extended by mutual agreement of the Parties and the Commission.
10. Any requests or proposals requiring Commission approval shall be addressed to the Director of Directorate B of the Commission's Directorate General for Competition, 150 Avenue de Cortenberg, 1000 Brussels. Any communications to the Parties shall be addressed to persons to be determined and communicated to the Commission before the Effective Date.

ANNEX 3

DESCRIPTION OF THE AUTOCLAVE

The autoclave mentioned in paragraph 5.2 is the SCHOLZ autoclave (diameter 2.2m x length 12 m) located at Aerospatiale Matra Lanceurs Les Mureaux, or any other autoclave able to cure central tubes for the Spacebus 3000 B3S platform, to be designated by the Parties.